ECONOMIC ANALYSIS OF LAW                  SPRING 2019

LGST 212 / BEPP 212

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https://canvas.upenn.edu/courses/1431026

Class Meetings  Mondays & Wednesdays, 10:30 – 11:50, Room TBD
Office Hours    Mondays, 3:00 – 5:00. Or email to arrange a meeting. Or stop by any time: my door is open if I’m around.

Course Description
This course provides an introduction to the economic analysis of law and legal institutions. Our goal is develop intuitions about the ways law simultaneously shapes and responds to private behavioral incentives. In the first half of the course, we will survey the application of key economic concepts to basic features of the Anglo-American common law of property, contract, and tort. In the second half of the course, we will use the tools developed in our survey to focus in depth on antitrust policy in conventional as well as network industries. [Suggested prerequisite: Econ 001]

Required Texts
2. Course pack [available from study.net]

Exams and Grading
Grades are based on professionalism (10%), the results of midterm (25%) and final (40%) exams, and the quality of (group) presentations on antitrust topics to be determined (25%).
Class Format and Policies

This course will involve a combination of lecture, discussion, and “Socratic” questioning. Cold calling will be a regular feature of class. Therefore, students are expected to read the assigned materials carefully and be ready to discuss them critically.

Three notable policies:

1. **Electronic devices.** Electronic devices are not permitted in class. Shopping, texting, and gaming negatively affect group dynamics. If an emergency requires that you have connectivity, confer with me before class.

2. **Unfinished readings.** It is not always feasible to complete readings before class. If you cannot finish an assignment, please let me know by email at least an hour before class, and I will not call on you (max four times during the semester). Please do not pretend to have read what you haven’t.

3. **Regrading.** All grades are final. Complaints about grades will result in a one-step grade reduction for the course.

More generally, students are expected to behave professionally. Shirking and whining are especially discouraged. A secondary goal of this course is to develop social intuitions about how to create a strong reputation within a business organization. Teaser: everyone likes someone who is courteous, punctual, engaged, and positive; everyone dislikes the opposite.

Informal Get-Togethers

Let’s get coffee or lunch!

Readings

Tentative reading assignments are listed below. If there is a change, I will let you know in class and post the updated assignment on Canvas. All readings can be found either in one of the assigned texts or on the course’s Canvas site.

1. **1.16.19** — reading judicial opinions; legal rules as price determinants

   **Readings**    Kerr, *How to Read a Legal Opinion*
   
   *Talley v. Mathis*
   
   Posner, §§ 1.1, 1.2

2. **1.23.19** — property rights

   **Readings**    Rose, *Possession as the Origin of Property*
   
   Demsetz, *Toward a Theory of Property Rights*
   
   Posner, §§ 2.1, 2.2, 2.3, 3.1
3. **1.28.19** — getting property

*Readings*  
*Ghen v. Rich*  
*Haslem v. Lockwood*  
*South Staffordshire Water Co. v. Sharman*

4. **1.30.19** — property and the injunction: information and monopoly

*Readings*  
*Armory v. Delamirie*  
*Ploof v. Putnam*

5. **2.4.19** — property and externalities: a basis for regulation?

*Readings*  
*Coase, The Problem of Social Cost*

6. **2.6.19** — contract remedies: efficient breach and opportunism

*Readings*  
*Acme Mills Elevator Co. v. Johnson*  
*Hadley v. Baxendale*

7. **2.11.19** — incomplete contracts: default rules

*Readings*  
*Posner, §§ 4.10 – 4.14*  
*Taylor v. Caldwell*  
*Ayres & Gertner, Filling Gaps in Incomplete Contracts*  
*Posner, § 4.16*

8. **2.13.19** — the mailbox rule: coin-flipping and arbitrary rules

*Readings*  
*Caldwell v. Cline*

9. **2.18.19** — comparative and contributory negligence: taking precautions

*Readings*  
*United States v. Carroll Towing*  
*Indiana Harbor Belt Ry. Co. v. American Cyanamid*  
*Posner, §§ 6.1, 6.2, 6.5*

10. **2.20.19** — detecting and penalizing torts

*Readings*  
*Polinsky & Shavell, Punitive Damages* (pp. 870–903)
11. 2.25.19 — causation puzzles

**Readings**
- *Summers v Tice*
- *Brauer v. New York Central*
- Posner, §§ 6.1, 6.7

12. 2.27.19 — nuisance

**Readings**
- Calabresi & Melamed, *One View of the Cathedral*

13. 3.11.19 — critiques of the economic analysis of law

**Readings**
- Dworkin, *Is Wealth a Value?*

14. 3.13.19 — midterm exam

15. 3.18.19 — theory of monopoly and advent of american antitrust legislation

**Readings**
- Posner, § 9.1
  - Sherman Act (1890), §§ 1, 2
  - Federal Trade Commission Act (1914), §§ 1, 5(a)(1), 5(a)(2)
  - Clayton Act (1914), §§ 4, 6

16. 3.20.19 — per se rules and the rule of reason

**Readings**
- *Board of Trade of Chicago v. United States*
- *United States v. Trenton Potteries*

17. 3.25.17 — cartel formation and maintenance

**Readings**
- *The Informant* (movie, 2009)
  - “Predicting Cartels” (pp. 1–17)
  - Stigler, *The Theory of Economic Regulation*

18. 3.27.17 — horizontal agreements: market definition and market power

**Readings**
- *NCAA v. University of Oklahoma*
- *O’Bannon v. NCAA*

19. 4.1.19 — detour: vertical arrangements

**Readings**
- *Dr. Miles Medical v. John D. Park & Sons*
Continental T.V. v. GTE Sylvania
Posner, § 10.4

20. 4.3.19 — mergers to monopoly
Readings Sherman Act, § 1; Clayton Act, § 7
   FTC v. Staples (1997)
   FTC v. Staples (2016)
Posner, § 10.5

21. 4.8.19 — monopolization: substitution, durable goods, potential competition
Readings Sherman Act, § 2
   United States v. Alcoa
   Posner, §§ 9.6, 10.8

22. 4.10.19 — leveraging monopoly: tying
Readings Sherman Act, § 2
   Jefferson Parish Hospital District v. Hyde
   Eastman Kodak v. Image Technical Services
   Posner, § 10.10

23. 4.15.19 — natural monopolies: theory and history
Readings New State Ice v. Liebmann
   Smyth v. Ames
   Posner, §§ 10.11, 13.1

24. 4.17.19 — network industries in the new economy
Readings Priest, Rethinking Antitrust Law in an Age of Network Industries

25. 4.22.19 — group presentations
Readings none

26. 4.24.19 — group presentations
Readings none
27. 4.29.19 — group presentations

Readings  none

28. 5.1.19 — review

Readings  none / all

FINAL EXAM

TBD